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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of UNITED AIR LINES, INC. and AIR CANADA under 49 U.S.C. §§41308 and 41309 for approval of and antitrust immunity for an expanded alliance agreement	Docket OST-96-1434-32

CONSOLIDATED JOINT ANSWER OF
UNITED AIR LINES, INC. AND AIR CANADA

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DATED: July 30, 1997

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Pursuant to Order 97-6-30, United Air Lines, Inc. ("United") and Air Canada jointly submit this consolidated answer to the objections of American Airlines, Inc. ("American") and Delta Air Lines, Inc. ("Delta") to the Department's tentative approval of the above-captioned application:

1. In Order 97-6-30, the Department concluded that its approval of the proposed expansion of the United/Air Canada alliance would "advance important public benefits." Specifically, the Department concluded that approval would permit United and Air Canada "to operate more efficiently and to provide better service to the U.S. travelling and shipping public...." In addition, the Department found that approval would enable "United to compete more effectively with other carriers and alliances in the U.S.-Canada transborder markets," and would be

consistent with the Department's "policy of facilitating competition among emerging multinational airline networks." Id. at 2. (Emphasis added.)

No party has challenged the Department's findings and conclusions relating to the public benefits which underlie its decision to approve the expanded alliance. Rather, two competitors of United and Air Canada have chosen to use the occasion of the Department's issuance of a show cause order to seek to advance their own agendas. The Department should not allow the irrelevant and repetitive issues raised by these competitors to delay still further the offering of the unchallenged public benefits that the Department has recognized will flow from implementation of the expanded alliance. United and Air Canada urge that the Department issue an order making final its findings and conclusions in Order 97-6-30 without further delay.

2. Delta seeks to reopen the issue of Toronto service by urging that antitrust immunity for the United/Air Canada alliance be deferred in U.S.-Toronto markets until February 1998, when additional competitive opportunities become available under the U.S./Canada bilateral air services agreement. The Department has already considered this Toronto issue at length pursuant to the pleadings of Delta and several other carriers not only in this case but in that involving American and Canadian Airlines

International ("CAI"). The Department has, in fact, already granted American/CAI antitrust immunity for their U.S.-Toronto operations (a factor Delta simply fails to mention) and has extended the same reasoning to the competing operations of United and Air Canada. The Department's decision to extend approval of immunity to U.S.-Toronto markets here, as in American/CAI, is based on "the unique circumstances of the U.S.-Canada Agreement, the limited nature and very short duration of the continuing restrictions, and the significant consumer competitive advantages that will arise from this alliance...." Order 97-6-30 at 18.

Delta has offered no basis for the Department to overturn its decision to include U.S.-Toronto markets in its approval. Indeed, the case for grant of antitrust immunity to United/Air Canada is even more compelling than was the case with American/CAI because the entry restrictions on U.S. carriers now have barely half a year to run. In short, Delta offers no basis for distinguishing between the two alliances for purposes of immunizing U.S.-Toronto services and, indeed, there is none.[1]

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[1] Delta, citing its own aspirations for expansion at Toronto, attacks (Objections at 4-5) the Department's conclusion that the "additional route opportunities made available in February 1997 will come near to satisfying U.S.-carrier demand for access" to Toronto. However, Delta fails to note that U.S. carriers are not even today fully utilizing the Toronto opportunities made available to them last February. For example, according to the July OAG, TWA operates only two daily nonstops between the U.S. and Toronto even though it is authorized under

(continued...)

3. American has cited the Department's evidence request and procedures in the case of the American/British Airways application for antitrust immunity and demands that the same procedures and evidentiary requirements be imposed in this proceeding. To the extent that there is any basis for comparing the procedures used by the Department to consider different alliances, those applied to the United/Air Canada and American/CAI alliances provide the best case for equal treatment. They each arise under the same bilateral agreement and each require consideration of the competitive impact in the same country-to-country and city-pair markets. Yet, American offers no comparison of these two cases. American, in fact, has enjoyed antitrust immunity for its alliance with CAI for over a year while the United/Air Canada has been pending. Any further delay has the effect of delaying or deferring still further the competition United and Air Canada will offer against the already immunized American/CAI alliance.

This is merely another in the series of arguments by American that because one alliance has been approved, all must be approved, effectively asking the Department to relinquish any discretion in reviewing alliances to determine their consistency

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[1](...continued)
the February 1997 Toronto opportunities to operate four. This would certainly tend to support the Department's conclusions that U.S. carrier demands are "nearly" satisfied.

with the public interest. The Department rejected similar arguments in the past and should do the same here. It is the Department's policy to consider each of these alliances "individually based on the circumstances presented in each case." Order 97-5-7 at 4; see also Orders 97-1-15, 96-11-12, and Notice dated June 24, 1997, in Docket OST-96-1988. That is just what the Department has done in the cases of United/Air Canada and American/BA.

The American/British Airways application requires different procedures because it arises in a far different regulatory and economic context from that of the United/Air Canada application. Most significantly, and wholly unmentioned by American, is the fact that the Department has already approved antitrust immunity for American's own alliance with CAI in the U.S.-Canada market. This decision was based upon the Department's conclusion that the U.S.-Canada bilateral agreement opened the unique transborder markets to a sufficient extent to allow such immunity to be granted.

American has offered no reason why either it or the Department need any further evidentiary submissions in this proceeding in order to issue a final order. The evidence required by the Department for consideration of this application is comparable in scope to that required and considered in the case of American/CAI. The Department has no need to "update"

that information here where its consideration of the evidence is complete. The fact that the Department has required different evidence and is following a different procedural schedule in the American/BA case is wholly irrelevant to the evidence and procedures followed in this one. American's "tit for tat" arguments should be summarily rejected.

4. Finally, Delta suggests that the Department should defer a final order in this proceeding until it has reviewed "the public interest and competition issues" involving the relationship of the Star Alliance to the United/Air Canada transborder alliance. Just what these issues may be or why their consideration would require any further deferral is something of a mystery. In their Joint Response, United and Air Canada demonstrated that the global Star Alliance would have relatively little impact on the United/Air Canada alliance, which by its terms is focussed on transborder U.S.-Canada services.

Delta has made no attempt to identify any particular issue relating to the Star Alliance that requires further consideration by the Department. The Department, as well as Delta, has already had nearly three weeks to consider the Star Alliance material submitted in response to Order 97-6-30. That three weeks already represents a substantial deferral of the already long-delayed final order in this case. There is no need

for any further deferral, and Delta's request should be dismissed.

Delta also asserts that third-country code sharing services between United and/or Air Canada and other members of the Star Alliance raise issues that should be of concern to the Department. Delta's assertion ignores entirely the fact that the application in this docket does not seek antitrust immunity for services between third countries and points in either the U.S. or Canada and does not involve services operated by carriers other than United and Air Canada. Delta's concerns are simply irrelevant to this proceeding, and should be rejected as such.

5. In conclusion, United and Air Canada urge the Department to proceed immediately to the issuance of a final order approving their alliance expansion. No party has cited any error in the Department's findings and conclusions with respect to the public benefits such approval will being. Neither Delta nor American has raised any issues requiring further consideration. Further delay in this proceeding, which is the apparent goal of Delta and American, is not in the interest of the public. The requests of Delta and American should be rejected so that United and Air Canada may begin to offer the

public those benefits which the Department has correctly found will flow from the expansion of their alliance.

Respectfully submitted,

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DATED: July 30, 1997

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Consolidated Joint Answer of United Air Lines, Inc. and Air Canada on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.

Brenda Gardner

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DATED: July 30, 1997

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